

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CAROL TUCKER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

CASE NO. 3:20-cv-05537-RBL

ORDER ON MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS

THIS MATTER is before the Court on Plaintiff Carol Tucker's Motion for Leave to Proceed In Forma Pauperis. Dkt. # 1.

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in resolving the application, but "the privilege of proceeding *in forma pauperis* in civil actions for damages should be sparingly granted." *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963). The standard governing *in forma pauperis* eligibility under 28 U.S.C. § 1915(a)(1) is "unable to pay such fees or give security therefor." A person is eligible if they are unable to pay the costs of filing and still provide the necessities of life. *See*

1 *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 203 (1993)
2 (internal quotations omitted).

3 The Court allows litigants to proceed *in forma pauperis* only when they have sufficiently
4 demonstrated an inability to pay the filing fee. This generally includes incarcerated individuals
5 with no assets and persons who are unemployed and dependent on government assistance. *See*,
6 *e.g.*, *Ilagan v. McDonald*, 2016 U.S. Dist. LEXIS 79889, at *2 (D. Nev. June 16, 2016) (granting
7 petition based on unemployment and zero income); *Reed v. Martinez*, 2015 U.S. Dist. LEXIS
8 80629, at *1, 2015 WL 3821514 (D. Nev. June 19, 2015) (granting petition for incarcerated
9 individual on condition that applicant provides monthly payments towards filing fee). It does not
10 include those whose access to the court system is not blocked by their financial constraints, but
11 rather are in a position of having to weigh the financial constraints pursuing a case imposes. *See*
12 *Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc.*, 686 F. Supp. 385, 388 (N.D. N.Y.),
13 *aff'd*, 865 F.2d 22 (2d Cir. 1988) (denying petition to proceed IFP because petitioner and his
14 wife had a combined annual income of between \$34,000 and \$37,000).

15 In addition, a court should “deny leave to proceed *in forma pauperis* at the outset if it
16 appears from the face of the proposed complaint that the action is frivolous or without merit.”
17 *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citations omitted); *see*
18 *also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis* complaint is frivolous if “it ha[s] no
19 arguable substance in law or fact.” *Id.* (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir.
20 1985); *see also Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984). A *pro se* Plaintiff’s
21 complaint is to be construed liberally, but like any other complaint it must nevertheless contain
22 factual assertions sufficient to support a facially plausible claim for relief. *Ashcroft v. Iqbal*, 556
23 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (citing *Bell Atlantic Corp. v. Twombly*,

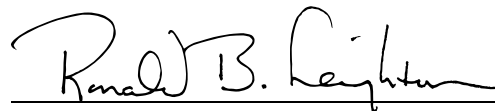
1 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). A claim for relief is facially
2 plausible when “the plaintiff pleads factual content that allows the court to draw the reasonable
3 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.
4 Ordinarily, the Court will permit pro se litigants an opportunity to amend their complaint in order
5 to state a plausible claim. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.
6 2011) (“Dismissal without leave to amend is improper unless it is clear, upon de novo review,
7 that the complaint could not be saved by any amendment.”).

8 Here, Tucker has been unemployed since 2007. Her only source of income is \$1,242.20
9 per month in government benefits. She attests to putting most, if not all, of this toward monthly
10 living expenses and has no savings. Tucker has demonstrated sufficient financial hardship to
11 satisfy the IFP standard.

12 Tucker’s proposed complaint is also not futile or clearly lacking in merit. Tucker is a
13 disabled, immunocompromised senior citizen with a number of additional health issues. She has
14 sued the United States Postal Service under Section 504 of the Rehabilitation Act for failure to
15 accommodate her health issues by delivering large parcels to her front door and seeks a court
16 order requiring the Postal Service to take up this practice. Tucker’s motion is GRANTED.

17 IT IS SO ORDERED.

18 Dated this 26th day of June, 2020.

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21 Ronald B. Leighton
22 United States District Judge
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